

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALISE MALIKYAR and ROBERT
JACOBSEN,

No. C 07-03533 WHA

Plaintiffs,

SUMMARY OF RECORDING

v.

JOHN SRAMEK, BERNADETTE
SRAMEK, HAROLD M. JAFFE, JOHN S.
SRAMEK AND BERNADETTE
SRAMEK REMOVABLE LIVING
TRUST AND DOES 1 TO 100, inclusive,

Defendants.

For the benefit of the court of appeals, this is the district judge's summary of the recordings played in open court on June 15, 2009, from Exhibit 1, the alleged wiretap device. In accordance with usual practice, the court reporter did not attempt to transcribe the audio when played. The device will remain in evidence and be available on appeal and presumably could be played by the circuit judges. For the convenience of all, this memorandum will summarize what the Court heard. Counsel have been given an opportunity to review, object, and suggest improvements to a prior draft, although none was made.

There were four recordings on the device. According to the device readout, the first recording was dated May 5, 2007. It lasted approximately thirty seconds. It consisted of a telephone number being dialed with dial tones, and a operator message that the call could not be completed as dialed.

1 The second recording was dated May 6, 2007, and it lasted 24 minutes. There was an
2 automated voice heard saying "One moment please." The call, if there was one, did not appear
3 to have been completed. That was followed with room noise, including clicks, paper shuffling,
4 and occasional audible sighs. There were also nasal sounds, sniffing, sweeping sounds, a door
5 closing and occasional clatter. There were a few sounds of handwriting scratching on paper.
6 Then, there was a dial tone and three digits were dialed followed by an automated "We're
7 sorry" and a disconnection. Then there were more room noises, opening of drawers, and
8 apparent sawing or sanding noises, and more nasal sniffing. A noise like someone tapping a
9 pencil eraser on a desk was then heard. What sounded like an electric drill or electric grinder or
10 background noise in a work shop came next. There was no music, conversation, or sounds of
11 human interaction except for a sneeze by a woman, followed by a man saying "Gesundheit,"
12 and a woman sneezing two more times. There were more shop noises, sanding noises, and a
13 clatter. Then there was more nasal sniffing, light tapping, an audible sigh, walking on the
14 floor, a door opening, and paper shuffling. A man was heard flipping through papers and
15 saying "Oh, fuck you" and "You got to be fucking kidding me." Lastly, there was an audible
16 sigh, sounds of walking on the floor as if back-and-forth, clatter, and paper rattling. The overall
17 impression was that a speaker phone was left on, after the uncompleted call, and that the device
18 recorded room sounds for 24 minutes.

19 The third recording was dated May 6, 2007, and it lasted six minutes. The recording
20 almost entirely consisted of static that sounded like heavy rain. There were possibly very faint
21 voices halfway through, but totally undecipherable. There was clatter and then the static went
22 away. A honk-honk sound was heard followed by the sound of someone walking across a floor.
23 Lastly, there was clatter.

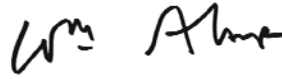
24 The final recording was dated July 3, 2007, and it lasted approximately thirty seconds.
25 Only static could be heard.

26 * * *

27 Overall, there was no apparent completed call and all recordings were consistent with
28 having been recorded via a speaker phone left in active setting.

Both sides may further have until **THURSDAY, JUNE 25 AT NOON** to file any objections to the accuracy or completeness of this summary.

Dated: June 23, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE